

OLC 78-1774
26 April 1978

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MEMORANDUM FOR THE RECORD

SUBJECT: H.R. 11383, the "U.S. Academy for Peace and Conflict Resolution Commission Act of 1978," H.R. 11326, a Bill to Establish an Institute for Human Rights and Freedom and H.R. 11548, a Bill to Establish a National Policy for the Application of Science and Technology to U.S. Foreign Policy

1. On 21 April I called the Subcommittee on International Operations of the House International Relations Committee to check on the status of H.R. 11383, a bill to establish a Commission on Proposals for a United States Academy for Peace and Conflict Resolution (formerly numbered H.R. 10192 and H.R. 10585). I was informed that the Subcommittee had scheduled a foreign relations authorization mark-up for 26 April and 1-2 May and that H.R. 11383 would probably be included in the mark-up. I asked if any other bills were to be considered during the mark-up and was told that H.R. 11326 and H.R. 11548 (respectively, a bill to establish an Institute for Human Rights and Freedom and a bill to establish a national policy for the application of science and technology to U.S. foreign policy) would also be considered.

2. Each of the subject bills have been under scrutiny in this office, and two of the three (H.R. 11383 and H.R. 11548) may create problems for the Agency if enacted.

3. H.R. 11383 would establish a "Commission" which itself would undertake a study to consider "whether to establish a United States Academy for Peace and Conflict Resolution." (H.R. 11383, 95th Cong., 2d Sess., section 4(a)(1) (1978)). It is section 7(c) of the bill that is problematic for the Agency. Section 7(c) provides:

"(c) The Commission may secure directly from any Federal agency information necessary to enable it to carry out this Act. Upon request of the Chairman [of the Commission], the head of any such Federal agency shall furnish such information to the Commission." (emphasis added)

The second sentence of subsection (c) cited above arguably places a statutory duty on the DCI to furnish to the Commission any information which the Commission deems necessary to enable it to carry out its responsibilities under the Act.

(Note that section 11(4) of the bill defines the term "Federal Agency" as "any agency, department, or independent establishment in the executive branch of the Federal Government, including any Government corporation." (emphasis added)). It is conceivable that the information requested by the Commission may contain intelligence sources and methods information. Since the DCI is made personally responsible for "protecting intelligence sources and methods from unauthorized disclosure" (50 U.S.C.A. section 403(d)(3)), a conflict is possible between the bill and the sources and methods provision of the National Security Act of 1947, as amended.

4. H.R. 11548 would establish in the Executive Office of the President a "Science, Technology, and Diplomacy Policy Board" on which "Board" would sit the DCI, among others. (H.R. 11548, 95th Cong., 2d Sess., section (2)(a) (1978)). The primary function of the "Board" would be to advise the President with respect to U.S. policy in the area of science and technology and its application to U.S. foreign policy. In addition the bill charges the Board to:

"(3) coordinate the international activities of all Federal Agencies involving science and technology;
(4) assist the Secretary of State as Vice Chairman of the Board in the negotiation, implementation, and coordination of bilateral and multilateral agreements substantially involving matters of science and technology; [and]

* * *

(6) implement measures to insure that the Secretary of State is adequately informed and consulted before any initiative involving science or technology is taken by any agency of the United States in relation to any foreign government or international organization." (emphasis added)

The paragraphs (3), (4) and (6) cited above are problematic from the point of view that they would vest authority in the hands of the Secretary of State to negotiate, implement and coordinate all "bilateral and multilateral agreements substantially involving matters of science and technology" entered into by any agency of the United States. Moreover, the bill would direct the "Board" to implement measures which would require any agency of the U.S. Government to inform and consult with the Secretary of State before any science or technology initiative is undertaken vis-a-vis any foreign government or international organization. The bill as drafted does not take into account the fact that the Agency enters into agreements

involving matters of science and technology in support of its operations abroad and does so independent of the Secretary of State. The Secretary of State through the country ambassador may be made knowledgeable of the agreement. However, the operative effect of H.R. 11458 would be to cut the CIA out of the whole process of science and technology agreements with foreign governments for operational support or would require that any CIA initiative in this regard be underwritten by the Secretary of State. It is the Agency's position that this is unnecessary and unacceptable. This matter is further exacerbated since nowhere in H.R. 11458 is the phrase "science or science and technology agreements" defined.

5. Of further concern in H.R. 11548 is the fact that the bill would require that the Secretary of State

"...submit an annual report to the Congress with respect to all science or science and technology agreements between the United States and foreign countries and all commissions involving science or technology of which the United States and one or more foreign countries are members. Such report shall include an accounting of expenditures and a description of programs initiated under such agreements and commissions..." (H.R. 11548, 95th Cong., 2d Sess., section 3(d) (1978)).

Subsection (d) as written would direct the Secretary of State to report annually all agreements, even those highly sensitive agreements entered into by the Agency, which agreements are already reportable under the Case Act.

6. After reviewing the three bills to determine problem areas, I called Tracey Cole, OMB, to find out if the Administration had formulated positions thereon. Ms. Cole informed me that the Administration is firmly opposed to H.R. 11383. I asked if OMB would be against our going to the Subcommittee to express our particular concerns with the bill, and she saw nothing wrong with this as long as the Agency opposed the bill in total. With regard to H.R. 11326, Ms. Cole indicated that the Administration is actively reviewing it and Dr. Brzezinski is pushing it and even wants the President to personally support it. Ms. Cole said further that State Department supports the bill in general but would advocate specific changes. OMB on the other hand, according to Ms. Cole, does not agree with Dr. Brzezinski or State. As of 21 April, then, no Administration position had been formulated with regard to H.R. 11326.

As for H.R. 11548, Ms. Cole indicated that hearings were held in mid-April with State Department testifying. To her knowledge State presented no prepared statement with regard to the bill. Ms. Cole suggested I call Jim Barie, also of OMB, to inquire further of H.R. 11548. Mr. Barie said that the Administration had not yet formulated a position and probably would not do so by Wednesday, 26 April, the first day of Subcommittee mark-up. However, he had no problem with our going to the Subcommittee informally to air our particular problems.

7. Not long after I had concluded my conversation with Mr. Barie, I received a call from Cy Alba, of the State Department, who said he had been informed that CIA was inquiring as to H.R. 11548. I indicated that the bill in general did cause us problems without going into the specifics. Mr. Alba informed me that State had testified on a third subsequent draft of H.R. 11548 which now is in the form of an amendment to the authorization bill. I asked if he had a copy of the amendment as currently being considered and if so could he make it available to us. Mr. Alba did have a copy and provided it to us via special courier (see attachment).

8. I next called Tom Smeeton, Minority Staff Consultant on the staff of the House Committee on International Relations, to inform him that we have some problems with H.R. 11383 and H.R. 11548 and would like to communicate these to the Subcommittee staff before mark-up. Mr. Smeeton asked Bill Fite, also of the staff, to get on the line with us, and they seemed more than willing to meet with us to discuss the problems. I indicated that I would be getting back to them to discuss the matter on Monday (24 April).

9. A quick review of the amendment language provided by Mr. Alba indicates that it could pose serious problems to the Agency if adopted.



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